



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE SUSHRUT ARVIND DHARMADHIKARI

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

FRIDAY, THE 20TH DAY OF JUNE 2025 / 30TH JYAISHTA, 1947

WA NO. 1043 OF 2025

**AGAINST THE ORDER/JUDGMENT DATED 02.05.2025 IN WP(C) NO.7660
OF 2023 OF HIGH COURT OF KERALA**

APPELLANT:

**YESHWANTH SHENOY
AGED 46 YEARS
S/O.V.L.SHENOY, 'PRIYADARSHINI', VEEKSHNAM ROAD,
ERNAKULAM, PIN - 682018**

BY ADV YESHWANTH SHENOY(PARTY-IN-PERSON)

RESPONDENTS:

- 1 THE BAR COUNCIL OF KERALA, REPRESENTED BY THE
HON.SECRETARY, BAR COUNCIL
BAR COUNCIL BHAVAN, HIGH COURT OF KERALA CAMPUS,
ERNAKULAM, PIN - 682031**
- 2 THE REGISTRAR-GENERAL
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031**
- 3 LIVE LAW MEDIA PRIVATE LIMITED REPRESENTED BY ITS
MANAGING DIRECTOR
3RDFLOOR, 41/3197 D-2 BHAGHEERATHA RESIDENCY, BANERJEE
ROAD, ERNAKULAM, PIN - 682018**

**BY ADVS.
SRI.P.K.SURESH KUMAR (SR.)
SRI.PRANOY K.KOTTARAM
SRI.N.N.SUGUNAPALAN (SR.)**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 22.05.2025, THE
COURT ON 20.06.2025 DELIVERED THE FOLLOWING:**

**JUDGMENT****Sushrut Arvind Dharmadhikari, J.**

The present intra-court appeal filed under Section 5 of the Kerala High Court Act, 1958 assails the judgment dated 02.05.2025 passed in WP(C) No.7660/2023, whereby the learned Single Judge has disposed of the Writ Petition granting liberty to the appellant to raise all contentions on the merits of the issue available to him before the Disciplinary Committee.

2. The brief facts of the case are that the appellant had filed a petition challenging the show cause notice at Ext.P1 dated 14.02.2023, whereby suo moto action alleging professional misconduct against the appellant for violation of standards of professional conduct and etiquette was issued. The appellant has filed the Writ Petition praying for the following reliefs:

“(i) To quash Ext.P1 notice issued as being issued in violation of the statutory requirements under the Bar Council Rules and Regulations.

Or in the Alternative

(ii) direct the Respondent No.1 to comply with the statutory requirements on receipt of complaints against advocates in accordance with the Rules and Regulations of the Bar Council.

(iii) Direct respondent No.2 to inquire / investigate and fix responsibility on the person responsible for having leaked the court documents to a 3rd person before the same even being served on the alleged contemnor.

(iv) Declare that the audio video recording of this Hon’ble Court be supplied to any interested person on the payment of reasonable fees for the same.

(v) Pass such other further order/orders as this Hon’ble court may deem fit and proper in the facts and circumstances of the case.”

3. The appellant is an Advocate enrolled in the Bar



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Council of Kerala and is practising before the High Court of Kerala and in other courts across the country. He happens to be the President of the Kerala High Court Bar Association. The show cause notice has been issued alleging violation of standards of official conduct and etiquette referring to the letter dated 09.02.2023 from the learned Judge of this Court, alleging that the appellant had shouted at the court, harassed the court and compelled this Court to record his submissions. The letter also says that the appellant repeated the submissions in a louder voice and even stated that he would see that the Judge is expelled from the seat.

4. Points which emerged for consideration before the learned Single Judge are:

1. Whether the State Bar Council can initiate *suo moto* action on professional or other misconduct?

2. The expression 'reason to believe' is employed in Section 35 of the Advocate's Act, 1961 (hereinafter referred to as the Act of 1961) only for the limited purpose of using it as a filter for excluding frivolous complaints against Advocates.

3. The requirement of 'reason to believe' cannot be converted into a formalized procedural road block, it being essentially a barrier against frivolous enquiries.

5. The learned Single Judge, while disposing of the Writ Petition came to the conclusion that no illegality is found in issuance of Ext.P1 notice by the Bar council of Kerala and the prayer to quash the same is rejected. It is also observed that since the appellant has



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already submitted his reply to Ext.P1 show cause notice and has also responded to the notice issued by the Disciplinary Committee, the issue has become academic, so to speak. Sri.Yeshwanth Shenoy, Advocate, appears in person and contended that the issues raised in the Writ Petition have not been considered and dealt at all by the learned Single Judge. Various issues were raised at the time of submissions, but all those have been ignored and not considered at all. The appellant would submit that the following issues were raised before the learned Single Judge:

1. The *suo moto* action has been initiated based on a letter/complaint filed by the Hon'ble Judge of this Court, therefore, as per Section 35 of the Advocate's Act, whenever a complaint is received or otherwise, the State Bar Council has reasons to believe that any Advocate on its role has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee. In the present case, no such 'reason to believe' has been recorded.

2. The important aspect that the learned Single Judge failed to consider is that the show cause notice (Ext.P1) was issued on 14.02.2023 by the Bar Council of Kerala. The term of the Bar Council of Kerala came to an end on 06.11.2023. In accordance to proviso to Section 8 of the Act of 1961, the Bar Council of India extended the term by six months up to 06.05.2024. Thereafter, no such extension can be granted. As per Section 8A of the Act, a special committee has to be formed by the Bar Council of India. In the present case, no such committee has been formed. Therefore, the appellant submitted that the Bar Council of Kerala did not exist at all.



Section 8A of the Act reads thus:

(1) Where a State Bar Council fails to provide for the election of its members before the expiry of the term of five years or the extended term, as the case may be, referred to in section 8, the Bar Council of India shall, on and from the date immediately following the day of such expiry, constitute a Special Committee consisting of

(i) the ex officio member of the State Bar Council referred to in clause (a) of sub-section (2) of section 3 to be the Chairman: Provided that where there are more than one ex officio members, the senior-most amongst them shall be the Chairman; and

(ii) two members to be nominated by the Bar Council of India from amongst advocates on the electoral roll of the State Bar Council, to discharge the functions of the State Bar Council until the Bar Council is constituted under this Act.

(2) On the constitution of the Special Committee and until the State Bar Council is constituted

(a) all properties and assets vesting in the State Bar Council shall vest in the Special Committee;

(b) all rights, liabilities and obligations of the State Bar Council, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations of the Special Committee;

(c) all proceedings pending before the State Bar Council in respect of any disciplinary matter or otherwise, shall stand transferred to the Special Committee.

(3) The Special Committee constituted under sub-section (1) shall, in accordance with such directions as the Bar Council of India may give to it in this behalf, hold election to the State Bar Council within a period of six months from the date of its constitution under sub-section (1), and where, for any reason the Special Committee is not in a position to conduct election within the said period of six months, the Bar Council of India may, for reasons to be recorded by it in writing, extend the said period.]

6. In the present case, no such constitution of special committee took place in absence of election, therefore, the existing body of the Bar Council of Kerala had no authority to proceed further in the disciplinary proceedings. The appellant further submitted that the Bar Council of India invoking Rule 32 of the Bar Council of India Certificate and Place of Practice (Verification) Rules, 2015 (Rule of



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2015) extended the term of the entire members of the Bar Council of Kerala for a period of further 18 months which is absolutely in violation of Section 8 & 8A of the Act. The extension of the term under Rule 32 is only for the specific purpose of completion of verification process and as such, it cannot be said that the entire powers of the Bar Council including disciplinary proceedings get extended. It is a settled legal position that the rule cannot override the specific provision of the Act. Therefore, the present Bar Council of Kerala is a body existing or continuing in violation of the statute.

7. The learned Single Judge failed to consider that now a days, the entire court proceedings are recorded and therefore, the audio/visual recordings of the court proceedings ought to have been supplied to the appellant where serious allegations are levelled against a particular advocate. As per the audio/video rules, the High Court is obliged to reserve the recordings. In the instant case, the application was rejected, saying that the recording is not available, which amounts to miscarriage of justice. Had the recordings been made available, the allegation would have been proved. The learned Single Judge, without dealing with this aspect, simply brushed aside by saying that the audio/visual recording is not available, which amounts to miscarriage of justice.

8. The appellant submitted that the learned Single Judge also failed to consider the fact that Bar Council of Kerala had no



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opportunity to delve on the matter in detail, given the extremely short time between the alleged date of complaint, ie, 09.02.2023 and the Bar Council meeting held on 11.02.2023 and thereafter, issuance of notice on 14.02.2023, to validly convene and resolve to refer the matter to the Disciplinary Committee, thereby rendering the action *de hors* the rule and without any application of mind.

9. The appellant contended that the Writ Petition was heard and reserved by the learned Single Judge on 04.06.2024 in a regular court proceedings having proper roster. The judgment was pronounced on 02.05.2025, after almost one year, during summer vacation, when there was no sitting of the particular judge or no roster, therefore, the judgment rendered is non-est in the eyes of law. He also submitted that the Hon'ble the Chief Justice is the exclusive authority to constitute court sittings as per roster, he being the master of the roster. He further submitted that the Hon'ble Apex Court in various judgments has held that where there is a delay of more than 3 months in pronouncing the judgments, then the matter should be released for re-hearing by another co-ordinate Bench.

10. The appellant contended that the Hon'ble Judge issued two letters addressed to the Hon'ble the Chief Justice on 09.02.2023 as well as to the Kerala State Bar Council on the same date. The High Court took this letter 'as an information' as postulated under Section 15(1) of the Contempt of Courts Act, 1971 and the



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Registrar General initiated action, as ordered by the Hon'ble Chief Justice. Thereafter the Division Bench of this Court took cognizance of the suo moto contempt matter on 28.02.2023, thus issuing notice to the appellant herein; and that the appellant filed his first counter affidavit on 22.05.2023 followed by another counter affidavit dated 25.09.2023. Thereafter, the matter was heard at length. Sri.S.Sreekumar, was also appointed as Amicus Curie to assist the court as also Sri.Sanal Kumar, learned counsel. The Division Bench of this Court in Cont.Case (Crl.) No.2 of 2023, in paragraphs 51 and 52, held thus:

“51. Thus, in our deeply considered opinion, the defect noticed is incurable and incapable of rectification through subsequent service of ‘information’ to the respondent, more so when it is beyond controversy that this Court had taken cognizance of the case with such being not available in the Judge’s Papers and thus without having adverted to it. This surely is fatal to the continuance of this case.

52. In summation, we are without doubt that it would not be expedient to proceed – the above noticed defect in proceedings being incurable and thus fatal – against the respondent further; and that it is axiomatically necessary for us to drop the proceedings and discharge him. It is so ordered”.

As has already been re-iterated herein above that the learned Single Judge has heard and reserved the matter on 04.06.2024 in a regular court proceedings and pronounced the judgment on 02.05.2025, the learned Single Judge failed to take into consideration, the proceedings of the Division Bench of this Court in Contempt Case (Crl) No.2 of 2023 where the appellant has been exonerated of the verbatim identical



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charges, therefore, the appellant submitted that he cannot be tried for the same cause of action before the Disciplinary Committee of the Bar Council of Kerala. Admittedly, the Bar Council of Kerala cannot go against the finding of the Division Bench of this Court under any circumstances and because of the delay of about one year in passing the judgment, this development was not taken note of by the learned Single Judge. Therefore, the judgment of the learned Single Judge as well as the show cause notice deserves to be set aside.

11. The appellant also contended that the learned Single Judge failed to consider the fact that the Bar Council of Kerala Rules, 1979 defines Bar Council. It means the Bar Council for the State of Kerala. The relevant extracts of Chapter IV that deals with meetings of the Disciplinary Committee is reproduced as under:

“1. The Bar Council shall hold its meetings not less than six times a year at Ernakulam.

2. The Secretary shall, in consultation with the Chairman, convene meetings of the Bar Council.

4. An extra ordinary meeting of the Bar Council shall be convened on a requisition in writing signed by not less than five members of the Bar Council Specifying the purpose.

5. Quorum.- The quorum for a meeting of the Bar Council shall be seven.

7. **Notice of Meeting.-** Not less than ten days notice of the meeting shall be given to every member of the Bar Council and committees **along with the agenda for the meeting**. Provided that three days notice shall be sufficient for an extra-Ordinary meeting of the Bar Council”.

12. Clause 7 deals with notice of meeting. ‘Notice of



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meeting' provides that not less than ten days notice of the meeting shall be given to every member of the Bar Council and Committees alongwith the agenda for the meeting. Provided that three days notice shall be sufficient for an extraordinary meeting of the Bar Council. The show cause notice issued to the appellant does not spell out that the decision to initiate suo moto contempt proceedings was taken in an extraordinary meeting of the Bar Council, meaning thereby the meeting of the Bar Council took place as a normal meeting. Therefore, ten days notice was mandatory to be issued to the appellant to reply to the show cause. Admittedly, in the present case, complaint is dated 09.02.2023, meeting held on 11.02.2023 and show cause notice issued on 14.02.2023. In any case, the meeting held by the Bar Council does not comply with clause 7 of the Rules. On this ground also, the show cause notice deserves to be set aside.

13. The appellant lastly contended that the communication/show cause notice issued to the appellant starts with the word 'complaint received'. Therefore, initiation of suo moto action has not been taken by the Bar Council. In view of the above, it is clear that the disciplinary proceedings is based on a complaint. Therefore, the complaint is not in accordance with statutory requirements.

14. Per contra, learned counsel appearing for the 1st respondent Bar Council of Kerala vehemently opposed the prayer and contended that the Writ Petition itself is not maintainable against a



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show cause notice which is under challenge. The copy of the same was forwarded to the appellant. All these aspects have been recorded in the interim order. The State Bar Council has the power to initiate *suo moto* proceedings as against an Advocate for misconduct under Section 35 of the Advocate's Act, 1961. So far as procedure is concerned, it is stated that the same has been followed and was placed in the meeting of the Bar Council held on 11.02.2023, where it was anonymously decided to register the complaint and to call for remarks from the appellant. The Bar Council, after detailed consideration and deliberations, decided to proceed under Section 35 of the Act and referred the matter to the Disciplinary Committee. The Writ Appeal is liable to be dismissed.

15. Heard the appellant in person as well as Sri.P.K.Suresh Kumar and Sri.Pranoy K.Kottaram, learned counsel appearing for respondent No.1 and Sri.N.N.Sugunapalan, learned counsel appearing for respondent No.2, and perused the record.

16. On careful consideration of the submissions of both sides, we answer the issues raised by the appellant in the following manner.

I. So far as initiation of *suo moto* action is concerned, perusal of Ext.R1(f) notice barely states that the disciplinary proceedings is on a complaint dated 09.02.2023 by the Hon'ble Judge, therefore, it cannot be said that the action initiated against the



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appellant is a *suo moto* action, therefore the procedure laid down under Section 35 appears to have not been followed.

(ii). So far as the constitution of the Disciplinary Committee of the Bar Council of Kerala is concerned, the term of the Bar Council came to an end on 06.11.2023. As per proviso to Section 8 of the Act, the Bar Council of India extended the term by six months up to 06.05.2024. Thereafter, as per Section 8A of the Act, a special Committee has to be formed by the Bar Council of India. However, no such committee was formed. Admittedly, at the time of launching the complaint, ie, on 09.02.2023, a properly constituted Bar Council of Kerala was in place. However, subsequently, after the expiry of the extended period, as per Section 8A, a special committee was required to be constituted in absence of elections which was not done in the present case. The Bar Council of Kerala is not existing at this time and therefore, the Bar Council cannot proceed with the case, unless and until a duly elected and properly constituted committee is in place. So far as invoking of Rule 32 of the Rules of 2015 extended in terms of the entire members of the Bar Council of Kerala, is only for the specific purpose of completion of verification process which does not include disciplinary proceedings. It is a settled legal position that the rule cannot override the specific provisions of the Act. Therefore, the present Bar Council of Kerala is a body existing or continuing in violation of the statute.



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(iii). The appellant had raised a demand regarding supply of audio/visual recordings of the Court proceedings, where serious allegations were levelled against him, but the same were not supplied saying that the same is not available. That also amounts to miscarriage of justice so far as the High Court Rules provides for recording of the same. The appellant had made specific averments that he had not abused or used derogatory words in the Court which could have been proved, had the recordings been made available.

(iv). So far as hearing the Writ Petition on 04.06.2024 and pronouncing the judgment on 02.05.2025 is concerned, the learned Single Judge failed to take into consideration, the fact that the Division Bench of this Court, by way of a judicial order passed in Contempt Case (Crl) 2 of 2023 on 18.10.2024, had already exonerated the appellant of similar charges and the contempt case was dismissed, therefore in any case, the disciplinary committee of the Bar Council cannot take a different view or cannot override the judgment of Division Bench of this Court for the same cause of action. Had the learned Single Judge taken into consideration the fact of dismissal of the Contempt Case, then certainly, the result of the Writ Petition ought to have been dismissal.

17. Taking into consideration, the findings recorded herein above, we are of the considered opinion that the learned Single Judge did not advert to the order passed in the contempt case,



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wherein the appellant has been fully exonerated and discharged of the similar allegations for which show cause notice has been issued by the State Bar Council of Kerala. The learned Single Judge has committed an error in not allowing the Writ Petition. At this stage, it is pertinent to point out that we are fully aware of the fact that normally no interference is called for in a petition against a show cause notice. However, this Court, without going to the other aspects of the matter, comes to the conclusion that in the light of exoneration of the appellant in the contempt case, where identical verbatim complaints were referred to the Hon'ble the Chief Justice and State Bar Council of Kerala, the issuance of a show cause notice and proceedings thereunder are absolutely unwarranted.

18. Accordingly, the order passed by the learned Single Judge dated 02.05.2025 passed in WP(C) No.7660/2023 is hereby set aside. As a consequence, the show cause notice at Ext.P1 dated 14.02.2023 also stands quashed and set aside.

The Writ Appeal is allowed. No order as to costs.

sd/-

SUSHRUT ARVIND DHARMADHIKARI
JUDGE

sd/-

SYAM KUMAR V.M.
JUDGE

Nsd